

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**DOCKETED**

JUL 07 2003

ROOFERS' UNIONS WELFARE TRUST )  
FUND, )

ROOFERS' LOCAL 11 PENSION FUND, )

ROOFERS' RESERVE FUND, )

THE CHICAGO ROOFERS' APPREN- )  
TICESHIP AND TRAINING FUND, )

ROOFERS INDUSTRY ADVANCE- )  
MENT AND RESEARCH FUND, )

PROMOTIONAL AND ORGANIZA- )  
TIONAL FUND, )

JULIE A. RACHAL, as Administrative )  
Manager of the ROOFERS, UNIONS )  
WELFARE TRUST FUND, ROOFERS' )  
LOCAL 11 PENSION FUND, ROOFERS' )  
RESERVE FUND, THE CHICAGO )  
ROOFERS' APPRENTICESHIP AND )  
TRAINING FUND; ROOFERS )  
INDUSTRY ADVANCEMENT AND )  
RESEARCH FUND, PROMOTIONAL )  
AND ORGANIZATIONAL FUND, )

Plaintiffs, )

v. )

W. R. KELSO CO., INC., an Indiana )  
corporation, )

Defendant. )

**03C 4641**

CIVIL ACTION  
JUDGE ASPEN  
NO.

JUDGE  
MAGISTRATE SIDNEY I. SCHENKIER

FILED-ED4  
03 JUL -3 PM 2:13  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

1-1

## **COMPLAINT**

NOW COME the ROOFERS' UNIONS WELFARE TRUST FUND; ROOFERS' LOCAL 11 PENSION FUND; ROOFERS' RESERVE FUND; THE CHICAGO ROOFERS' APPRENTICESHIP AND TRAINING FUND; ROOFERS INDUSTRY ADVANCEMENT AND RESEARCH FUND; and PROMOTIONAL AND ORGANIZATIONAL FUND; and JULIE A. RACHAL, as Administrative Manager of the ROOFERS' UNIONS WELFARE TRUST FUND, ROOFERS' LOCAL 11 PENSION FUND, ROOFERS' RESERVE FUND, THE CHICAGO ROOFERS' APPRENTICESHIP AND TRAINING FUND, ROOFERS INDUSTRY ADVANCEMENT AND RESEARCH FUND, and PROMOTIONAL AND ORGANIZATIONAL FUND, by their attorneys, and for their Complaint against Defendant, W. R. KELSO CO., INC., an Indiana corporation, allege as follows:

1. This action arises under the laws of the United States and is brought pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sections 1132, 1145 (hereinafter referred to as "ERISA"). Jurisdiction is based upon the existence of questions arising thereunder, as hereinafter more fully appears.

2. Plaintiffs are "employee welfare benefit plans," "plans," and "fiduciaries," within the meaning of ERISA, and Plaintiff, JULIE A. RACHAL, is the Administrative Manager of Plaintiff Funds and a fiduciary with respect thereto. Plaintiff Funds are administered within this District.

3. Defendant is an "employer" within the meaning of ERISA, who is obligated to make fringe benefit contributions to Plaintiffs under the terms of the Agreements and Declarations of Trust pursuant to which Plaintiffs are maintained and/or pursuant to the terms of a collective bargaining

agreement to which Defendant is a party or is obligated along with United Union of Roofers, Waterproofers and Allied Workers, Local No. 11, Division of the Construction Industry, AFL-CIO.

4. As an Employer obligated to make fringe benefit contributions to Plaintiffs under the Agreements and Declarations of Trust, Defendant is specifically required to do the following:

- (a) To submit for each month a report stating the names, Social Security numbers, and number of hours worked in such month by each and every person on whose behalf contributions are required to be made by Defendant to Plaintiffs, or, if no such persons are employed, to submit a report so stating;
- (b) To accompany the aforesaid reports with payment of contributions based upon an hourly rate as stated in the applicable Collective Bargaining Agreement or Agreements;
- (c) To make all of its payroll books and records available to Plaintiffs for the purpose of auditing the same to verify the accuracy of Defendant's past reporting upon request made by Plaintiffs;
- (d) To compensate Plaintiffs Roofers' Unions Welfare Trust Fund, Roofers' Local 11 Pension Fund and Roofers Reserve Fund for the additional administrative costs and burdens imposed by delinquency or untimely payment of contributions by way of the payment of liquidated damages in the amount of fifteen (15%) percent of any and all contributions which are not received by Plaintiffs Roofers' Unions Welfare Trust Fund, Roofers' Local 11 Pension Fund and Roofers Reserve Fund for a particular month prior to the 15th day of the succeeding month and the sum of two hundred and fifty (\$250.00) dollars for each monthly report that is submitted late or not at all and interest shall accrue on that amount from the date an Employer becomes delinquent at the rate determined as of January 1 and July 1 of each year and shall be equal to the prime interest rate (as published from time to time in the Money Rates Section of the Wall Street Journal) plus four (4%) percent, compounded monthly, on the total delinquent amount, including Employer contributions, liquidated damages, interest charges, late fees and attorney's fees, audit fees and other collection costs and expenses, until paid;
- (e) To compensate Plaintiff National Roofing Industry Pension Fund for the additional administrative costs and burdens imposed by delinquency or untimely payment of contributions by way of payment of liquidated damages in the amount of ten (10%) percent of any and all contributions which are not received by Plaintiff National Roofing Industry Pension Fund for a particular month prior to the 15<sup>th</sup> day of the succeeding month;

- (f) To pay any and all costs incurred by Plaintiffs in auditing Defendant's payroll records should it be determined that Defendant was delinquent in the reporting or submission of any contributions required to be made to Plaintiffs;
- (g) To pay Plaintiffs' reasonable attorneys' fees and costs necessarily incurred in the prosecution of any action to require Defendant to submit its payroll books and records for audit or to recover delinquent contributions;
- (h) To furnish to Plaintiffs a bond with good and sufficient surety thereon, in an amount acceptable to Plaintiffs, to cover future contributions due the Plaintiffs;
- (i) To attend, when invited, meetings of the Plaintiffs' Delinquency Committee and to pay Plaintiffs an assessment of one thousand (\$1,000.00) dollars to compensate the Plaintiffs for the additional administrative costs and other burdens imposed by delinquency or untimely payment of contributions should invited Employers fail to attend Delinquency Committee Meetings of the Plaintiffs.

5. Defendant is delinquent and has breached its obligations to Plaintiffs and its obligations under the Plans in the following respect:

Defendant has failed and refused to submit all of its reports to Plaintiffs due to date and/or has failed to make payment of all contributions acknowledged by Defendant thereon to be due Plaintiffs. Defendant is, therefore, subject to liquidated damages, as authorized by the Trust Agreements. Plaintiffs have assessed liquidated damages against the Defendant, as authorized by the Trust Agreements, but Defendant has failed and refused to make payment of said liquidated damages.

6 That upon careful review of all records maintained by Plaintiffs, and after application of any and all partial payments made by Defendant, there is a total of at least \$32,465.81, known to be due Plaintiffs from Defendant, based upon Defendant's refusal to permit an audit and failure to submit all required reports, and subject further to the possibility that additional contributions and liquidated damages will come due during the pendency of this lawsuit.

7. Plaintiffs have requested that Defendant perform its obligations, but Defendant has refused and failed to so perform.

8. Defendant's continuing refusal and failure to perform its obligations to Plaintiffs is causing and will continue to cause irreparable injuries to Plaintiffs for which Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

- A. That Defendant be enjoined and ordered to submit all delinquent monthly contribution reports to Plaintiffs, and to continue submitting such reports while this action is pending.
- B. That judgment be entered in favor of Plaintiffs and against Defendant for all unpaid contributions, interest on the unpaid contributions, liquidated damages, and Plaintiffs' reasonable attorneys' fees and costs of action, as specified herein or as subsequently determined, all as provided for in the plans and in ERISA.
- C. That Defendant be permanently enjoined to perform specifically its obligations to Plaintiffs, and in particular to continue submitting the required reports and contributions due thereon to Plaintiffs in a timely fashion as required by the plans and by ERISA.
- D. That Plaintiffs have such further relief as may be deemed just and equitable by the Court, all at Defendant's cost.

  
\_\_\_\_\_  
One of the Attorneys for the Plaintiffs

Names and Address of Attorneys for the Plaintiffs:

Catherine M. Chapman  
Stephen J. Rosenblat  
Scott D. Pfeiffer  
Beverly P. Alfon  
Karl E. Masters  
Patrick N. Ryan  
BAUM SIGMAN AUERBACH  
NEUMAN & KATSAROS, LTD.  
200 W. Adams Street, Suite 2200  
Chicago, IL 60606  
312/236-4316

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# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ROOFERS' UNIONS WELFARE TRUST  
FUND, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

W. R. KELSO CO., INC.,  
an Indiana corporation

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

**DOCKETED**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Baum Sigman Auerbach Neuman & Katsaros,  
200 W. Adams Street, Suite 2200  
Chicago, IL 60606-5231  
(312) 236-4316

JUL 07 2003

## ATTORNEYS (IF KNOWN)

MAGISTRATE SIDNEY I. SCHENKIER

**DOCKETED**

FILED  
JUL 12 2003  
S. DIST. CT.  
CHICAGO, IL

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF  
Citizen of Another State ☐ 2 ☐ 2 PTF DEF  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 PTF DEF  
Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4  
Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
Foreign Nation ☐ 6 ☐ 6

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 166 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 185 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 655 Occupational Safety/Health <input type="checkbox"/> 660 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input checked="" type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 881 HIA (1395f) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DWC/DIWW (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS - Third Party 26 USC 7608	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 550 General <input type="checkbox"/> 555 Death Penalty <input type="checkbox"/> 560 Mandamus & Other <input type="checkbox"/> 565 Civil Rights <input type="checkbox"/> 568 Prison Condition		

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

29 U.S.C. §§1132, 1145; An action to recover delinquent fringe benefit contributions

## VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

VIII. This case ☒ is not a refiling of a previously dismissed action.

☐ is a refiling of case number \_\_\_\_\_, previously dismissed by Judge \_\_\_\_\_

DATE

7/2/03

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

UNITED STATES DISTRICT COURT

1-2

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

ROOFERS' UNIONS WELFARE TRUST  
FUND, *et al.*

vs.

W. R. KELSO CO., INC., an Indiana  
corporation

JUDGE:

Case Number:

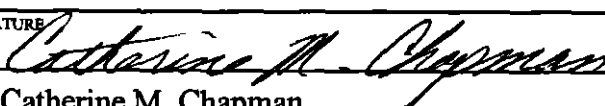
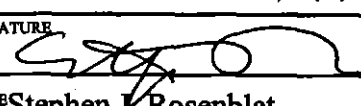
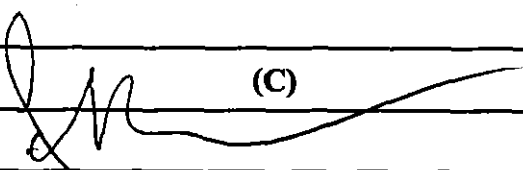
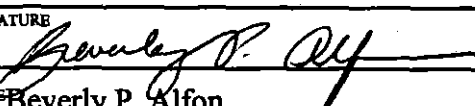
**DOCKETED**  
JUL 07 2003  
**03C 4641**

JUDGE ASPEN

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

ROOFERS' UNIONS WELFARE TRUST FUND, *et al.*, Plaintiffs herein

MAGISTRATE SIDNEY L. SCHENKIER

(A)	(B)
SIGNATURE 	SIGNATURE 
NAME Catherine M. Chapman	NAME Stephen J. Rosenblat
FIRM BAUM SIGMAN AUERBACH NEUMAN & KATSAROS	FIRM Same As (A)
STREET ADDRESS 200 W. Adams Street, Suite 2200	STREET ADDRESS
CITY/STATE/ZIP Chicago, IL 60606	CITY/STATE/ZIP
TELEPHONE NUMBER (312) 236-4316	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6204026	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6204044
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TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)	(D)
SIGNATURE 	SIGNATURE 
NAME Scott D. Pfeiffer	NAME Beverly P. Alfon
FIRM Same As (A)	FIRM Same As (A)
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6272869	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6274459
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

ROOFERS' UNIONS WELFARE  
TRUST FUND, *et al.*

vs.

W. R. KELSO CO., INC., an Indiana  
corporation

JUDGE:

Case Number

**03C 4641**

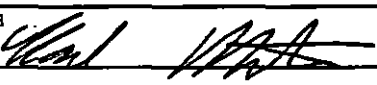
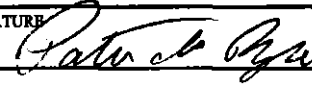
JUDGE ASPEN

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

ROOFERS' UNIONS WELFARE TRUST FUND, *et al.*, Plaintiffs herein

MAGISTRATE SIDNEY I. SCHENKIER

**DOCKETED**  
JUL 07 2003

(E)	(F)
SIGNATURE 	SIGNATURE 
NAME Karl E. Masters	NAME Patrick N. Ryan
FIRM BAUM SIGMAN AUERBACH NEUMAN & KATSAROS	FIRM Same As (E)
STREET ADDRESS 200 West Adams Street, Suite 2200	STREET ADDRESS
CITY/STATE/ZIP Chicago, IL 60606	CITY/STATE/ZIP
TELEPHONE NUMBER (312) 236-4316	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6277980	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
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	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>

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